

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulation for Reducing Volatile Organic Compound Emissions from Consumer Products (the Consumer Products Regulation).

DATE: October 28, 1999
TIME: 9:30 a.m.
PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m., October 28, 1999, and will continue at 8:30 a.m., October 29, 1999. This item may not be considered until October 29, 1999. Please consult the agenda for the meeting, which will be available at least 10 days before October 28, 1999, to determine the time when this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board by October 18, 1999, at (916) 322-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, and 94513, title 17, California Code of Regulations (CCR).

Background

Section 41712 of the California Health and Safety Code requires the ARB to adopt regulations to achieve the maximum feasible reduction in volatile organic compound (VOC) emissions from consumer products. As part of the regulatory process, the ARB must determine that adequate data exist for it to adopt the regulations. The ARB must also determine that the regulations are technologically and commercially feasible, and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form.

Pursuant to Health and Safety Code section 41712, the Board has approved the California Consumer Products Regulation: sections 94507-94517; title 17, CCR, which was adopted by the Board in three phases. Phase I was approved on October 11, 1990, Phase II was approved on January 9, 1992, and Phase III (or “Mid-term Measures”) was approved on July 24, 1997.

On November 15, 1994, the ARB adopted the California State Implementation Plan for Ozone (SIP). The SIP serves as California’s overall plan for attaining the federal ambient air quality standard for ozone. Achieving significant VOC reductions from consumer products is a key element of the SIP. The consumer products element of the SIP is comprised of Near-term, Mid-term, and Long-term measures. The Near-term measures are comprised of the Phase I and II consumer products regulations (and other ARB regulations related to consumer products). The Mid-term measures commitment was partially fulfilled by the Phase III amendments to the Consumer Products Regulation.

Description of the Proposed Regulatory Action

The proposed regulatory action would amend the existing Consumer Products Regulation by adding product category definitions and VOC limits for two new categories, and by adding more stringent VOC limits for fifteen existing categories. Additional subcategories are proposed for some of the existing product categories with separate VOC limits for each subcategory. The new or modified VOC limits would become effective from December 31, 2002, to December 31, 2004, depending on the product category. In addition, various modifications are proposed to the existing definitions for certain product categories. Finally, the proposed regulatory action would consolidate and expand the existing reporting requirements for products containing methylene chloride or perchloroethylene. The proposed regulatory action (referred to as “Mid-term Measures II”) will achieve VOC emission reductions of about 21 tons per day statewide.

Comparable Federal Regulations

The U.S. EPA has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act: *National Volatile Organic Compound Emission Standards for Consumer Products* (40 CFR Part 59, subpart C, sections 59.201 et seq.; see the September 11, 1998, *Federal Register*, Vol. 63, No. 176, pages 48819-48847). The rule specifies VOC limits for a number of consumer product categories, and is similar in format to the ARB’s consumer products regulation. However, there are significant differences between the rules. The U.S. EPA’s rule applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who “sells, supplies, offers for sale, or manufactures consumer products for use in the State of California.” The U.S. EPA’s rule does not regulate a number of product categories which are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of the ARB’s limits are more stringent than the U.S. EPA’s limits. All of the VOC limits in the U.S. EPA’s rule have an effective date of December 10, 1998, whereas the VOC limits in the ARB regulation and the proposed amendments are phased in from 1993 to 2005. Finally, the U.S. EPA’s rule has an unlimited “sell-through” period for noncomplying products manufactured before the effective date of the limits, whereas California law allows a three year sell-through

period.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action which includes a summary of the environmental and economic impacts of the proposal, and supporting technical documentation. Copies of the ISOR may be obtained from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (October 28, 1999). The ISOR contains the full text of the proposed amendments. The staff has also compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified below.

The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the ISOR for this regulatory action.

To obtain the ISOR in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 322-4505, TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento Area. This notice, the ISOR, and all subsequent regulatory documents are being made available on the ARB Internet site on this rulemaking, <http://www.arb.ca.gov/regact/conspro/conspro.htm>. Further inquiries regarding this matter should be directed to Ms. Barbara Fry, Manager, Measures Development Section, Stationary Source Division, at (916) 322-8267.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the cost or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on the ability of California businesses to compete with businesses in other states, or on directly-affected private persons. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments should have minor impacts on the creation or elimination of jobs within the State of California, minor impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minor impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the

economic impacts of the proposed amendments can be found in the ISOR.

As explained in the ISOR, it is likely that some individual businesses may be adversely affected by the proposed regulatory action. Therefore, the Executive Officer finds that the adoption of the proposed amendments may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the ARB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the ARB, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, or 2020 L Street, 4th Floor, Sacramento, CA 95814, no later than 12:00 noon October 27, 1999, or received by the Clerk of the Board at the hearing.

The ARB requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under the authority granted to the ARB in sections 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 40000, 41511, and 41712 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the modifications are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY
EXECUTIVE OFFICER

Date: